ZAKARIA HANAFI

v.

IBRAHIM HANAFIAH & ORS

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABDUL MALEK AHMAD JCA
AHMAD FAIRUZ JCA
[CIVIL APPEAL NO: K-02-222-1995]
10 AUGUST 1999

LANDLORD & TENANT: *Padi cultivators legislation - Padi land - Tenancy - Tenancy by oral agreement - Unregistered - Whether could give rise to a relationship of landlord and tenant under padi cultivators legislation - Whether tenancy must be in writing and duly registered - Padi Cultivators (Control of Rent and Security of Tenure) Ordinance 1955 - Padi Cultivators (Control of Rent and Security of Tenure) Act 1967, ss. 3, 4, 7(1), 16(2) - Kedah Land Enactment (repealed) s. 94*

LANDLORD & TENANT: *Padi cultivators legislation - Applicability - Padi land - Tenancy by oral agreement - Unregistered - Whether a valid tenancy under the padi cultivators legislation - Payment of rent to predecessor in title - Whether giving rise to yearly tenancy - Whether tenancy valid under law of contract - Right to remain as tenant under National Land Code 1965 - Whether superseded by padi cultivators legislation - Padi Cultivators (Control of Rent and Security of Tenure) Ordinance 1955 - Padi Cultivators (Control of Rent and Security of Tenure) Act 1967, ss. 3, 4, 7(1), 16(2) - Kedah Land Enactment (repealed), s. 94 - National Land Code 1965, ss. 206(1) & (2), 213(1), 223, 223(3)*

The respondents became tenants of some parcels of land in Kedah pursuant to certain oral agreements, and for years had developed and cultivated the land as padi land ('the subject land'). In 1989 the appellant became the new owner of the subject land. The appellant refused to accept the respondents as tenants, and served on the respondents notices to quit and to deliver vacant possession. The respondents refused to oblige as they had been paying rents to the predecessor in title of the subject land, and consequently applied to the Committee under s. 7(1) of the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 ('the Act'), for an order that the appellant execute tenancy agreements with them. On 25 November 1989, however, the Enquiry Officer dismissed the application and issued an eviction order against the respondents. The respondents appealed, but the appeal was dismissed by the Padi Tribunal on grounds that a relationship of landlord and tenant had not existed as between the appellant and the respondents.

The respondents applied to the High Court for an order of *certiorari* to quash the Tribunal's decision. The learned judge, relying *inter alia* on the Federal Court case of *Ismail v. Hj Taib*, ruled that there was a legally binding contract between the appellant's predecessor in title and the respondents under the law of contract. The learned judge further held that the Act is a special law to protect tenants of padi land, and that being so, non-compliance thereof would not make an otherwise valid contract illegal or void. The appellant appealed and argued that the oral agreement between the predecessor in title and the respondents was not enforceable, as in respect of padi land, a tenancy agreement must comply with ss. 3 and 4 of the Act and must be in writing and registered with the Registrar.

Held:
Per NH Chan JCA

[1] By s. 223(3) of the National Land Code 1965 ('the Code'), a tenancy of land which is to be used for the cultivation of padi can only be created under the provisions of the Padi Cultivators legislation. The Padi Cultivators legislation, in other words, prevails over all tenancies for the cultivation of padi to the exclusion of the Code. A landlord, thus, can only let his land for the cultivation of padi under the provisions of the Padi Cultivators (Control of Rent and Secutiry of Tenure) Ordinance 1955, which later became the Padi Cultivators (Cultivation of Padi and Security of Tenure) Act 1967 and thereafter the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 (Revised 1994).

[2] Since the Padi Cultivators legislation is the sole legislation that applies, and since, as found by the judge below, there was no tenancy agreement which complied with the Act in the present case, the respondents could no longer be treated as yearly tenants because their right to remain as such tenants under the Code had been superseded by the substitution for the Padi Cultivators Act.

[3] The Federal Court in *Ismail v. Hj Taib* had acted under the mistaken belief that the Kedah Land Enactment (s. 94), which recognised an unregistered lease not exceeding one year, written or parol, was the law applicable to the case at the time. That Enactment was repealed as of 1 January 1966 with the coming into force of the Code. Clearly, *Ismail v. Hj Taib* concerned the 1966-67 padi season which event could only have occurred after the Enactment was repealed. Also, as the Enactment had been repealed, it was impossible after 1 January 1966 for it to co-exist with the Padi Cultivators Ordinance.

[4] In the circumstances herein, any payment or receipt of rent no longer creates a contractual tenancy, but instead it creates a statutory right to remain as a tenant if the provisions of the Act are met. This means that proceedings can only be taken under the Act for its enforcement.

Per Abdul Malek Ahmad JCA

[1] The Act is an Act relating to the control of rent and security of tenure of padi cultivators and matters incidental thereto. It goes without saying that a padi cultivator seeking protection pertaining to matters relating to the control of rent and security of tenure must see to it that there is a tenancy agreement registered to that effect.

[2] It is obvious that there was no tenancy agreement in writing and registered between the previous owner and the respondents and consequently between the parties to this appeal. Even if it is accepted that there was some arrangement between the respondents and the previous owner, it was only then an oral agreement, and that being so, there was not in existence a tenancy agreement in line with the Act.

[3] *Ismail v. Hj Taib* relied not only on the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance 1955, but also on the Kedah Land Enactment ('Enactment') which recognised that tenancy agreements need not be in writing and registered. The Enactment, however, was repealed on 1 January 1966 with the coming into force of the National Land Code 1965 ('the Code'), which by s. 3(2) specifically stated that nothing in the Code shall affect the provisions of the Ordinance, and which by s. 223(3) provided that nothing in that section shall authorise a landlord, as defined in the Ordinance, to let land for the cultivation of padi otherwise than in pursuance of the Ordinance.

[3a] It follows that, with the coming into force of the Code, matters relating to the control of rent and security of tenure of padi cultivators were governed solely by the Ordinance, now the Act, and the relevant agreement had to be in writing and registered under the Act from 1 January 1966.

[3b] It follows further that the decision in *Ismail v. Hj Taib* may not be quite correct because the so-called breach occurred only in June 1966 after the Code came into force, and, although the parties had entered into the tenancy arrangement well before the introduction of the Code, the rights of the parties prior to the coming into force of the Code were extinguished on the 1 January 1966 or, at the latest, when the yearly tenancy came to an end in 1966.

[4] The High Court here was in error, despite the issuance of rental receipts by the previous owner, when it held that there was a valid tenancy agreement existing before the appellant became the owner because there was no tenancy agreement in writing and registered under the Act since the Code came into force.

[Appeal allowed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Responden-responden menjadi penyewa kepada beberapa keping tanah di Kedah berikutan beberapa perjanjian lisan, dan untuk bertahun-tahun telah mengusahakannya sebagai tanah padi ('tanah tersebut'). Pada tahun 1989 perayu menjadi tuan tanah yang baru kepada tanah tersebut. Perayu enggan menerima responden sebagai penyewa, dan telah menyerahkan kepada responden notis untuk keluar dan mengosongkan tanah tersebut. Responden enggan keluar kerana mereka membayar sewa bagi tanah tersebut kepada pemunya terdahulu, dan dengan itu memohon kepada Jawatankuasa di bawah s. 7(1) Akta Penanam Padi (Mengawal Sewa dan Menjamin Pemegangan) 1967 ('Akta'), untuk perintah bahawa perayu memeterai perjanjian tenansi dengan mereka. Bagaimanapun, pada 25 November 1989, Pegawai Penyiasat menolak permohonan responden dan seterusnya mengeluarkan satu perintah keluar terhadap responden. Responden merayu kepada Tribunal Padi, tetapi rayuan berkenaan juga ditolak atas alasan bahawa tidak wujud hubungan tuan tanah dan penyewa di antara perayu dan responden.

Responden memohon kepada Mahkamah Tinggi untuk perintah *certiorari* untuk membatal keputusan Tribunal. Hakim yang bijaksana, berdasarkan antara lain penghakiman Mahkamah Persekutuan dalam kes *Ismail lwn. Hj Taib*, memutuskan bahawa terdapat satu perjanjian yang sah di antara pemunya terdahulu dan responden di bawah undang-undang kontrak. Hakim yang bijaksana juga memutuskan bahawa Akta adalah satu undang-undang khas untuk melindungi penyewa-penyewa tanah padi, dan dengan itu, ketidakpatuhan kepadanya tidak membuatkan sesuatu kontrak yang sah menjadi tidak sah atau terbatal. Perayu merayu dan berhujah bahawa perjanjian lisan diantara pemunya terdahulu dan responden tidak boleh dikuatkuasa, oleh kerana, berhubung tanah padi, sesuatu perjanjian tenansi harus mematuhi ss. 3 dan 4 Akta, dan hendaklah dibuat secara bertulis dan didaftar dengan Pendaftar.

Diputuskan:
Oleh NH Chan HMR

[1] Berdasarkan s. 223(3) Kanun Tanah Negara 1965 ('Kanun'), suatu tenansi bagi tanah yang akan digunakan untuk menanam padi hanya boleh dibuat di bawah Undang-undang Penanam Padi. Undang-undang Penanam Padi, dalam ertikata lain, mengatasi semua tenansi untuk penanaman padi dan mengatasi juga Kanun. Seseorang penyewa tanah, oleh yang demikian, hanya boleh menyewa tanahnya untuk penanaman padi di bawah peruntukan Ordinan Penanam Padi (Mengawal Sewa dan Menjamin Pemegangan) 1955, yang kemudian menjadi Akta Penanam Padi (Mengawal Sewa dan Menjamin Pemegangan) 1967 dan selepas itu Akta Penanam Padi (Mengawal Sewa dan Menjamin Pemegangan) 1967 (Disemak 1994).

[2] Oleh kerana Undang-undang Penanam Padi adalah undang-undang tunggal yang terpakai, dan oleh kerana, seperti yang didapati oleh hakim di bawah, tidak terdapat perjanjian tenansi yang mematuhi Akta di dalam kes semasa, responden tidak lagi boleh dianggap sebagai penyewa tahunan kerana hak-hak mereka di bawah Kanun sebagai penyewa sedemikian telah dihapuskan oleh Akta Penanam Padi.

[3] Mahkamah Persekutuan dalam *Ismail lwn. Hj Taib* telah bertindak di bawah kepercayaan khilaf bahawa Enakmen Tanah Kedah (s. 94), yang mengiktiraf pajakan kurang dari setahun yang tidak didaftar, adalah undang-undang yang terpakai kepada kes pada masa itu. Enakmen tersebut telah dimansuhkan pada 1 Januari 1966 dengan penguatkuasaan Kanun. Jelas, *Ismail lwn. Hj Taib* memperkatakan tentang musim padi 1966-67 hal yang mana hanya boleh berlaku selepas Enakmen dimansuh. Juga, oleh kerana Enakmen telah dimansuh, adalah tidak mungkin selepas 1 januari 1966 untuk ianya wujud bersama-sama dengan Ordinan Penanam Padi.

[4] Dalam halkeadaan di sini, sebarang bayaran atau resit sewa tidak lagi mewujudkan satu perjanjian tenansi, tetapi ianya mewujudkan hak untuk terus menjadi penyewa sekiranya peruntukan-peruntukan Akta dipenuhi. Maknanya, prosiding penguatkuasaan hanya boleh diambil di bawah Akta.

Oleh Abdul Malek Ahmad HMR

[1] Akta adalah suatu Akta berhubung dengan Pengawalan Sewa dan Jaminan Pemegangan Penanam Padi dan hal-hal yang bersangkutan dengannya. Ianya mengikut bahawa seseorang penanam padi yang mencari perlindungan berhubung perkara kawalan sewa dan jaminan pemegangan hendaklah mempastikan bahawa terdapat satu perjanjian tenansi yang telah didaftarkan dengan sempurnanya.

[2] Ianya jelas bahawa tiada perjanjian tenansi bertulis dan didaftarkan di antara pemunya terdahulu dan responden dan dengan itu di antara pihak-pihak kepada rayuan di sini. Walaupun ianya diterima bahawa terdapat beberapa persetujuan di antara responden dan pemunya terdahulu, ianya hanyalah perjanjian lisan, dan dengan sebab itu, tidak wujud suatu perjanjian tenansi menurut kehendak Akta.

[3] *Ismail v. Hj Taib* bergantung bukan sahaja kepada Ordinan Penanam Padi (Kawalan Sewa dan Menjamin Pemegangan) 1955, tetapi juga kepada Enakmen Tanah Kedah ('Enakmen') yang memperuntukkan bahawa perjanjian tenansi tidak perlu bertulis dan didaftarkan. Enakmen bagaimana pun telah dimansuhkan pada 1 Januari 1966 dengan berkuatkuasanya Kanun Tanah Negara 1965 ('Kanun'), yang mana melalui s. 3(2) nya menyatakan dengan khusus bahawa tiada apapun di dalam Kanun mempengaruhi peruntukan Enakmen, dan yang mana melalui s. 223(3) nya menyatakan bahawa tiada apapun di dalam seksyen tersebut memberi kuasa seorang tuan tanah, mengikut takrifnya di dalam Ordinan, menyewa tanah untuk penanaman padi kecuali mengikut peruntukan Ordinan.

[3a] Ianya mengikut bahawa, dengan berkuatkuasanya Kanun, perkara-perkara berkaitan dengan kawalan sewa dan jaminan pemegangan penanam padi adalah diselia sepenuhnya oleh Ordinan, kini Akta, dan perjanjian yang relevan hendaklah merupakan perjanjian bertulis dan didaftarkan di bawah Akta dari 1 Januari 1966.

[3b] Ia selanjutnya mengikut bahawa keputusan dalam *Ismail lwn. Hj Taib* mungkin tidak berapa betul sebab kemungkiran (breach) yang dikatakan itu berlaku hanya dalam bulan Jun 1966 selepas Kanun berkuatkuasa, dan, walaupun pihak-pihak telah memeterai perjanjian tenansi lama sebelum kedatangan Kanun, hak-hak yang terakru kepada pihak-pihak tersebut sebelum penguatkuasaan Kanun menjadi terhapus pada 1 Januari 1966 atau, selewat-lewatnya, bila tenansi tahunan tamat pada tahun 1966.

[4] Walaupun resit sewaan dikeluarkan oleh pemunya terdahulu, Mahkamah Tinggi di sini khilaf bilamana memutuskan bahawa terdapat perjanjian tenansi yang sah sebelum perayu menjadi tuan punya, kerana tidak terdapat perjanjian tenansi bertulis dan didaftarkan di bawah Akta selepas Kanun dikuatkuasakan.

[Rayuan dibenarkan.]

Case(s) referred to:
Bernays v. Prosser [1963] 2 QB 592 ***(refd)***
Clayton v. Blakey [1798] 8 Term Rep 3 ***(refd)***
Hj Taib v. Ismail [1971] 2 MLJ 36 ***(refd)***
Ismail v. Hj Taib [1972] 1 MLJ 259 ***(refd)***
Lace v. Chantler [1944] KB 368 ***(cit)***
Marcroft Wagons Ltd v. Smith [1951] 2 KB 496 ***(refd)***
Martin v. Smith [1874] LR 9 Exch 50 ***(cit)***
Palmer v. Carey [1926] AC 703 ***(refd)***
Prudential Assurance Co Ltd v. London Residuary Body [1992] 2 AC 386 ***(refd)***
Rhyl UDC v. Rhyl Amusements Ltd [1959] 1 WLR 465 ***(refd)***
Sevenoaks, Maidstone and Tunbridge Rly Co v. London, Chatham and Dover Rly Co [1879] 11 CH D 625 ***(refd)***
Siew Soon Wah v. Yong Tong Hong [1973] 1 MLJ 133 ***(refd)***
Zakaria Hanafi v. Ibrahim Hanafiah [1994] 4 CLJ 776 ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 3(1)
Contracts Act 1950, s. 30
Kedah Land Enactment (repealed), s. 94
National Land Code 1965, ss. 3(2), 206(1), (2)(a), 213(1), (2)(a), 221, 223(3), 438
Padi Cultivators (Control of Rent and Security of Tenure) Act 1967, ss. 2, 3, 4, 7(1), 16(2)
Specific Relief Act 1950, s. 20(1)(c)

Other source(s) referred to:
Cheshire and Burn's Modern Law of Real Property, 1994, 15th edn, pp 383, 384, 385, 386, 464

For the appellant - Karpal Singh; M/s Karpal Singh & Co
For the respondents - S Visvanathan; M/s Ahmad Farid & Assoc

[Appeal from High Court, Alor Setar; Civil Suit No: 23-23-93]

Reported by WA Sharif

JUDGMENT

NH Chan JCA:

The appellant (plaintiff) has, in the instant case, brought an action against the respondents (defendants) for the recovery of land. The appellant had bought the land from one Tengku Maheran the previous owner in 1989 and became the present registered proprietor. This piece of land is 93 relongs in area and it is padi land.

This is what the judge in the court below said (see *Zakaria bin Hanafi v. Ibrahim bin Hanafiah* [1994] 3 MLJ 561, 567):

> According to DW1, the previous owner did not enter into a written agreement with the defendants because Tengku Hisham told them the owner would not repossess the land and that they could continue to cultivate the land till the end of time. DW1 did not agree with the suggestion by the plaintiff's counsel that the tenancy was from one season to another. I was not able to ascertain from the evidence the nature of the tenancy and how the tenancy could be terminated. There was insufficient evidence to suggest a yearly tenancy and a tenancy forever is unconscionable. I was not satisfied that the three month's notice was sufficient and proper to evict the defendants from the land. I tend to disagree with the submission by the defendants' counsel that the tenancy could be terminated under s. 24(1)(f) of the [Padi Cultivators (Control of Rent and Security of Tenure)] Act [1967] by the plaintiff applying to the committee for the eviction of the defendant on the ground that the plaintiff desired to cultivate the land himself provided that the plaintiff shall have given one year's notice in writing to the defendants that he required the land for cultivation by himself. This relief was not available to the plaintiff as there was no tenancy agreement which complied with the Act. I ruled, therefore, that the three month's notice of termination and delivery of vacant possession was of no effect.

And he concluded thus (at 568):

> I had decided that the defendants were the lawful tenants of the plaintiff's predecessor-in-title and they continued to remain the tenants of the plaintiff. The order of vacant possession must follow the event. The order of the court was as follows:
>
> (1) The plaintiff's action was dismissed with costs.
>
> (2) The defendants were declared the lawful tenants of the plaintiff.
>
> (3) The plaintiff was to deliver vacant possession to the defendants within three months.
>
> (4) The plaintiff was to pay damages (to be assessed) and costs to the defendants.

Hence, this appeal by the plaintiff who is now the appellant and the defendants are now the respondents.

There is no such thing in law as a lease in perpetuity: see *Sevenoaks, Maidstone and Tunbridge Rly Co. v. London, Chatham and Dover Rly Co.* [1879] 11 Ch. D. 625 at 635-6. And a contract for a lease to be granted in perpetuity or till the end of time is void for uncertainty. In *Lace v. Chantler* [1944] KB 368 it was held that an agreement to let a house for the duration of the war did not create a valid tenancy. See also *Prudential Assurance Co. Ltd v. London Residuary Body* [1992] 2 AC 386, HL. Viscount Dilhorne when delivering the judgment of the Board (Lord Wilberforce, Viscount Dilhorne, Lord Pearson, Lord Kilbrandon and Lord Salmon) in the case of *Siew Soon Wah v. Yong Tong Hong* [1973] 1 MLJ 133, PC, said this at 134:

> If the use of the word 'permanent' meant that the landlord was bound to let and the respondent to rent the shop in perpetuity, the agreement would be of no effect, for as Jessel MR said in *Sevenoaks, Maidstone & Tunbridge Rly Co. v. London, Chatham and Dover Rly Co.* [1879] 11 Ch. D. 625 at page 635, there is no such thing in law as a lease in perpetuity.

Although a perpetual lease cannot be granted under s. 221 of the National Land Code 1965 (the Code) and a contract for a perpetual lease is void for uncertainty under s. 30 of the Contracts Act 1950 and a contract the terms of which the court cannot find with reasonable certainty cannot be specifically enforced (see s. 20(1)(c) of the Specific Relief Act 1950) so that a contract for a lease which is void for uncertainty is not specifically enforceable, nevertheless, according to the common law (which applies; see s. 3(1) Civil Law Act 1956) where the intended tenant, with the consent of his landlord, goes into possession under a void lease (as here in the instant case), he becomes a tenant at will by implication and if he pays rent at a yearly rate, he will be presumed to be a yearly tenant: see *Martin v. Smith* [1874] LR 9 Exch. 50; *Rhyl UDC v. Rhyl Amusements Ltd* [1959] 1 WLR 465.

See *Cheshire and Burn's Modern Law of Real Property*, 15th Edn (1994) for the meaning of a "tenancy at will" according to the common law. It states at p. 383:

> A tenancy at will may be created either expressly (E.g. *Manfield & Sons Ltd v. Botchin* [1970] 2 QB 612; *Hagee (London) Ltd v. AB Erikson and Lawson* [1976] QB 209) or by implication, as, for example, where a tenant, with the consent of his landlord, holds over after the expiry of the lease; or where he goes into possession under a contract for a lease or under a void lease; or where a purchaser goes into possession prior to completion, or a prospective tenant goes into possession during negotiations for a lease (*British Railways Board v. Bodywright Ltd* [1971] 220 EG 651).

Where an intended tenant, with the consent of his landlord, goes into possession under a contract for a lease or under a void lease he becomes a tenant at will by implication and, if he pays rent at a yearly rate, according to the common law, he is presumed to be a yearly tenant. In equity, however, under English law, in the case of a contract for a lease (not a contract for a lease which is void for uncertainty) the intended tenant has the equitable remedy of specific performance available to him, provided, of course, that the constituents of an enforceable contract are present and he has abided by the terms of the contract. In this country, the equitable remedy of specific performance have been embodied into the statutory remedy of specific relief under the Specific Relief Act. "One effect, therefore, of such a specifically performable contract is that the prospective tenant immediately acquires an

equitable interest in the land in the sense that he has an equitable right to a legal estate (*Palmer v. Carey* [1926] AC 703 at 706).": See *Cheshire and Burn, supra,* at p. 377.

A tenancy at will is quite unlike a tenancy at sufferance. A tenant at sufferance is a person who continues in possession and wrongfully holds over, without the consent of the landlord, after the term has come to an end. "Such a person differs from a tenant at will because his holding over after the determination of the term is a wrongful act, and he differs from a disseisor in that his original entry upon the land was lawful.": *Cheshire and Burn's Modern Law of Real Property*, at p. 384.

Cheshire and Burn, at p. 385, goes on to explain how a tenant at will becomes a tenant on a yearly basis by presumption of law. It reads:

> (I) Where a tenant at will pays a yearly rent it has been the law from an early date that the payment and acceptance of rent is presumptive evidence of an intention by the parties to establish a yearly tenancy, provided that the rent is contractually assessed on a yearly basis (*Clayton v. Blakey* [1798] 8 Term Rep. 3).

The rule in *Lace v. Chantler, supra,* that requires certainty of duration in the case of a lease for a fixed term does not apply to a tenancy from year to year (or to any other periodic tenancy). Lord Templeman explained in *Prudential Assurance Co. Ltd v. London Residuary Body* [1992] 2 AC 386, at 394, that:

> A tenancy from year to year is saved from being uncertain because each party has power by notice to determine at the end of the year. The term continues until determined as if both parties made a new agreement at the end of each year for a new term for the ensuing year.

This is because, as explained by Lord Templeman, in the case of a tenancy from year to year (or any other periodic tenancy) it is saved from being uncertain because each party has power by a proper notice to quit to terminate the year's tenancy (or the tenancy of any other periodic tenancy) at the end of the year (or of the term of any other periodic tenancy) before another year's term (or term of any other periodic term) could begin. Until it is determined the term in a periodic tenancy continues as if both parties made a new agreement at the end of each term for a new term for the ensuing year.

At p. 386 *Cheshire and Burn* goes on to say this:

But the presumption in favour of a yearly tenancy raised by the payment and acceptance of rent may be rebutted by contrary evidence, as for instance by proof that, unknown to the lessor, the payments have been made by a squatter who disseised the original occupier (*Tickner v. Buzzacott* [1965] Ch. 426). In this case, the original occupier was not a tenant at will but was holding under a lease for an unexpired period of 75 years. See also *Manfield & Sons Ltd v. Botchin* [1970] 2 QB 612), or where the tenant has a right to remain in possession as a statutory tenant of a residential letting within the Rent Act (*Marcroft Wagons Ltd v. Smith* [1951] 2 KB 496). As Lord Denning said (*Ibid*, at 506)

> If the acceptance of rent can be explained on some other footing than a contractual tenancy, as, for instance, by reason of an existing or possible statutory right to remain, then a new tenancy should not be inferred.

Under the Code tenancies for terms not exceeding three years may be granted under s. 223 and this type of tenancies is described in s. 213(1) as a "tenancy exempt from registration". Such tenancies are exempted under s. 206(2)(a) from the requirement of registration under s. 206(1) of the Code. Accordingly, such a tenancy "shall be valid whether effected in writing or by word of mouth only": s. 213(2)(a). So that a periodic tenancy from year to year or from month to month is a tenancy exempt from registration under s. 213(1) of the Code as it is a tenancy of not more than three years duration (s. 223). "A tenancy from year to year differs from a tenancy for a fixed number of years, in that, unless terminated by a proper notice to quit, it may last indefinitely; and from a tenancy at will, in that the death of either party or the alienation of his interest by either party does not effect its determination.": see *Cheshire and Burn's Modern Law of Real Property*, at p. 384 - Tenancy From Year To Year. In reality, a tenancy from year to year may actually be greater than a tenancy for one year: *Bernays v. Prosser* [1963] 2 QB 592. Whether it is a tenancy from year to year or a tenancy for one year, such tenancies are not required to be registered under s. 206(1) of the Code.

But sub-s. (3) of s. 223 of the Code is important and is crucial to the decision of the instant case. It reads:

> 223(3) Nothing in this section shall authorise a landlord (as defined in the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance, 1955) to let land for the cultivation of padi otherwise than in pursuance of that Ordinance.

By the above statutory provision (s. 223(3) of the Code) a tenancy of land which is to be used for the cultivation of padi can only be created under the provisions of the Padi Cultivators' legislation. The provisions of the National Land Code relating to the creation and effect of leases or tenancies do not apply to land which is used for cultivating padi. A landlord can only let his

land for the cultivation of padi under the provisions of the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance 1955, which later became the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 (No. 43 of 1967) and the current statute is Act 528 Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 (Revised-1994). In other words, the Padi Cultivators' legislation prevails over all tenancies for the cultivation of padi to the exclusion of the Code.

Yet, in *Ismail v. Haji Taib* [1972] 1 MLJ 259 the Federal Court held that the registration provision of the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance 1955 was permissive only and not a mandatory requirement of the Ordinance and, therefore, could co-exist with the Kedah Land Enactment. As a matter of fact, the Padi Cultivators Ordinance 1955 continued to be in force in Kedah until the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 came into force in Kedah on 1 January 1970. This is what Suffian FJ who delivered the judgment of the court (Suffian, Gill and Ali FJJ) said, at 260:

> Tenancy agreement is defined by section 2 simply as meaning "an agreement whereby the landlord agrees to let and a tenant agrees to take any land for the purpose of cultivating padi". It does not say that it must be in writing so that in our judgment it could be oral. Though section 5 says that there must be a memorandum in writing which must be deposited with the registrar, the Ordinance does not however say that if there is no memorandum in writing or if there is a memorandum in writing but it has not been registered, the tenancy is then illegal. In our judgment, in such an event the relationship between the parties is governed by the Kedah Land Enactment. This means that the relationship between the parties was perfectly legal, being governed solely by the law of contract.
>
> It seems to us that the object of registration under the Padi Cultivators Ordinance is to protect tenants of padi land from the whims and fancies of their landlords, for under section 3 a padi tenancy agreement (which can only be for one season) must be renewed by the landlord if the tenant requires it for the following season and under section 10 the tenant cannot be rejected without a written order from the padi committee. The Ordinance does not in our judgment render illegal a tenancy agreement not in writing or registered.

Section 94 of the Kedah Land Enactment provides:

> 94 Any lease or agreement for a lease granted for a term not exceeding one year shall be valid without registration and every registered dealings with land shall be subject to any such prior lease, tenancy, or agreement for a lease to a tenant in possession thereunder.

And Suffian FJ concluded thus (260):

> In the circumstances we would hold that the plaintiff was a tenant of the defendant and a tenant for a year (considering that he paid rent by the year), and that the defendant was wrong in turning him out of the land.

In fact, the Federal Court in *Ismail v. Haji Taib* had acted under the mistaken belief that the Kedah Land Enactment (s. 94), which recognised an unregistered lease (whether it was in writing or by parol) not exceeding one year, was the law applicable to the case at the time and that would probably explain why it held that there was nothing in the legislation then which would prevent the Enactment from co-existing with the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance 1955 which required the registration of tenancies for the cultivation of padi.

Although *Ismail v. Haji Taib* was decided in 1971 by the High Court at Alor Setar (see *Haji Taib v. Ismail* [1971] 2 MLJ 36), nevertheless, Suffian FJ thought that it was a case when the Kedah Land Enactment was still in force. In fact, the Enactment was repealed as from the commencement of the National Land Code 1965 (see s. 438 of the Code) which only came into force on 1 January 1966. But the case concerned the 1966-67 padi season which event could only have occurred after the Kedah Land Enactment was repealed on 1 January 1966. Section 223(3) of the Code specially stipulates that the Padi Cultivators' legislation prevails over the landlord's ability to let land for the cultivation of padi to the exclusion of the Code. There is no provision similar to that of s. 223(3) of the Code in the Kedah Land Enactment. In any case, it was impossible after 1 January 1966 for the Enactment to co-exist with the Padi Cultivators Ordinance as the Enactment had been repealed.

I shall now apply the law to the facts of the present case. If the Padi Cultivators' legislation were not to apply exclusively to all tenancies for the cultivation of padi in this case, then, the respondents would be tenants from year to year (since rents were paid at the end of each yearly harvest to the previous owner) and, because the tenancies were for less than three years' duration they were not required to be registered under the Code (s. 206(1)). The proper length of a notice to quit in order to terminate a yearly tenancy would then have to be half a year (see *Cheshire and Burn, supra,* at 464) and not the three months' notice that the appellant had given to the respondents.

But, in the instant case, the Padi Cultivators' legislation is the sole legislation that applies. Section 223(3) of the Code provides for the Padi Cultivators' legislation to prevail over all contractual tenancies for the cultivation of padi to the total exclusion of the Code. Therefore, since (as found by the judge below) there was no tenancy agreement which complied with the Padi

Cultivators Act in the present case and, as there can be no other contractual tenancy for the letting of the land for the cultivation of padi which can be created otherwise than in pursuance of that Act, the respondents could no longer be treated as yearly tenants because their right to remain as such tenants under the Code had been superseded by the substitution for the Padi Cultivators Act.

The padi cultivation tenancies in the present case were not tenancies for a fixed term (which, if created before the coming into force of the Code on 1 January 1966 could be allowed to terminate at the expiry of the term, and if created after that date would be void because of s. 223(3) of the Code) but were tenancies that were created from tenancies at will which became tenancies on a yearly basis by presumption of law. It has been the law from early times that the payment and acceptance of rent is presumptive evidence of an intention by the parties to establish a yearly tenancy, provided that the rent is contractually assessed on a yearly basis (*Clayton v. Blakey* [1798] 8 Term Rep. 3). But the presumption in favour of a yearly tenancy raised by the payment and acceptance of rent can be rebutted by contrary evidence, as for instance, if it can be explained on some other footing than that of a contractual tenancy. As an example, if rent is received from the tenant who has an existing or possible statutory right to remain as a tenant (*Marcroft Wagons Ltd v. Smith* [1951] 2 KB 496, 506 by Lord Denning) or, as here, where the respondents' only right to remain as a tenant is no longer under any contractual tenancy (like a contract for a fixed term) or presumed contractual tenancy (like a periodic tenancy) but is now to be under the Padi Cultivators Act. In these circumstances, any payment or receipt of rent no longer creates a contractual tenancy (presumed or otherwise) but instead it creates a statutory right to remain as a tenant if the provisions of the Act are met. This will mean that proceedings can only be taken under the Act for its enforcement.

The Code generally recognises these presumed contractual tenancies (namely, periodic tenancies) created according to the common law but it is only when it comes to tenancies for padi cultivation that such tenancies are to be governed solely by the Padi Cultivators' legislation (s. 223(3)).

We have allowed the appeal with the result that there shall be judgment for the plaintiff (appellant) and the defendants' (respondents') counterclaim is dismissed.

Abdul Malek Ahmad JCA:

The appellant had bought the subject land which is 93 relongs in area comprised in Geran No. 3736 Lot No. 1226 Mukim Kangkong, Daerah Kota Setar in Kedah in June 1989 from Tengku Maheran. The respondents were tenants on the land as their predecessors had developed and cultivated it as padi land for more than twenty years.

Rents were paid to Tengku Hisham as representative of the previous owner. When the appellant became the owner, he refused to accept the rents because he was not willing to accept the respondents as tenants. This was because he had, prior to the purchase, made a search at the land registry and found no encumbrance on the land.

Accordingly, on becoming owner, he had served on the respondents notices to quit and to deliver vacant possession within three months. However, the respondents refused to do so and instead filed an application under s. 7(1) of the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967 (hereinafter "the Act") to the Committee for an order requiring the appellant to execute tenancy agreements with the respondents. The matter was heard by the Enquiry Officer on 12 November 1989 pursuant to s. 16(2) of the Act.

For ease of reference, it may be pertinent at this stage to reproduce s. 7(1) and s. 16(2) of the Act:

> 7 (1) Subject to subsection (2) every tenant shall be entitled at his option to a renewal of his tenancy agreement which shall include the season next following the season to which his last-expired tenancy agreement related and if the landlord fails to grant such renewal the tenant may apply to the Committee for an order requiring the landlord to grant renewal or to execute a new tenancy agreement.
>
> 16(2) Where the State Authority considers it desirable so to do, it may instead of establishing and appointing a Committee under subsection (1) appoint an Enquiry Officer who shall have all the functions and may perform all the duties of the Committee or of the Chairman under this Act and for that purpose any reference in this Act to the Committee or Chairman shall be construed as reference to the Enquiry Officer.

The Enquiry Officer, however, on 25 November 1989 dismissed the respondents' application by delivering the decision dated 15 November 1989 which ordered them to vacate the land within two weeks. The respondents appealed to the Padi Tribunal against that order but their appeal was dismissed on the basis that there was insufficient evidence to raise the relationship of landlord and tenant. They then applied by originating motion to the High Court for an order of *certiorari* to quash the Tribunal's decision.

With regard to the Enquiry Officer, the learned High Court judge deciding on the originating motion said:

> While the Enquiry Officer could have proceeded with the enquiry on the date of hearing, as soon as the Enquiry Officer became aware that he had to decide whether a tenancy agreement ever existed in respect of the padi land, he should have stopped the proceedings because he had no power to determine that question. He had powers in relation to a tenancy agreement which was extant

or which had expired. Nowhere in the Act is there a power given to the Committee (or an Enquiry Officer) to determine whether a tenancy agreement ever existed in respect of the padi land. That is a matter for a competent court of law to decide.

The Enquiry Officer proceeded to determine whether there ever was an agreement and ordered the applicants.

> to leave and not cultivate the padi land ... which is to be cultivated personally by the legal owner with effect November 30, 1989.

When he was ordered by the Padi Tribunal to give reasons for his decision and he gave them, clearly the reason was that he had found "the said land (was) not subjected to any tenancy agreement."

Thus, he had determined an issue – whether there was a tenancy agreement – which he had no power to decide. He had issue an eviction order which he again had no power to make.

As for the Tribunal, the learned judge has this to say:

> The Tribunal would have had jurisdiction if there was a tenancy matter arising under section 7(1). But in the circumstances of this case the Tribunal had no jurisdiction since the issue was not that but whether there was a relationship of landlord and tenant and it had been decided that there was no tenancy arising at all. The tribunal's decision which in effect, firstly, affirmed the null and void proceedings which continued after the Enquiry Officer became aware that he had to determine whether a tenancy existed or not (a matter which he was not empowered to decide) and, secondly, affirmed a null and void order of eviction, (which) could not and should not have been made. The Tribunal should have declined jurisdiction to hear the appeal. The decision was therefore a nullity. The application for *certiorari* must be allowed and the decision of the Padi Tribunal dismissing the appeal against the decision of the Enquiry Officer is quashed. Costs to applicants.

Reverting to this appeal, the issue before the court below was whether there was a tenancy agreement between the appellant and the respondents. It was the appellant's contention that in respect of padi land, any tenancy agreement had to comply with ss. 3 and 4 of the Act in that it had to be in writing in the prescribed form and registered with the registrar within fourteen days of its execution which would constitute sufficient notice to any purchaser. Consequently, learned counsel for the appellant argued that the oral agreement between the appellant's predecessor in title and the respondents was not enforceable.

The learned trial judge held that a tenant whose tenancy agreement complies with the Act is protected by the Act whereas a tenant whose tenancy agreement does not comply with the Act nevertheless is protected under the common law or the law of contract. He went on to hold that there was a legally binding contract between the appellant's predecessor in title and the respondents under the law of contract because the Act is a special law to protect the tenants of padi land and if its requirements were not complied with, that would not make an otherwise valid contract illegal or void. He was of the view that a contractual relationship of landlord and tenant under the law of contract can co-exist with a tenancy agreement under the Act.

In his judgment, as reported in *Zakaria bin Hanafi v. Ibrahim bin Hanafiah & Ors* [1994] 3 MLJ 561, he had so stated at p. 566:

> In my view, there was a legally binding contract between the plaintiff's predecessor-in-title and the defendants and such contract is governed by the law of contract. The Act is a special law re-enacted to protect the tenants of paid land from unscrupulous landowners and, therefore, the requirements of a written agreement and registration under the Act, if not complied with, would not make an otherwise valid legal contract illegal, void and of no effect. A contractual relationship of landlord and tenant under the law of contract can co-exist with a tenancy agreement under the Act. A tenant whose tenancy agreement complies with the Act is protected under the provisions of the Act whereas a tenant whose tenancy agreement does not comply with the Act nevertheless is protected under the common law or the law of contract.

On the same page and at p. 567 he had continued:

> Having ruled that there was a tenancy agreement between the plaintiff's predecessor-in-title and the defendants, I proceeded to consider whether there was similarly a tenancy agreement between the plaintiff and the defendants.
>
> The evidence disclosed that the plaintiff conducted a search at the local land registry before he purchased the land. His search revealed that there was no encumbrance on the land in particular the defendants' interest in the land. When the plaintiff entered into a sale and purchase agreement with the previous owner it was provided therein that he purchased the land free from any encumbrances, a sale described as 'jual putus'. However, upon close scrutiny of his evidence, he admitted under cross-examination that he visited the land before he purchased it and he knew that there were people cultivating the land. Tengku Hisham's representative also told him that many people were in occupation of the land and were cultivating it. Nevertheless, the plaintiff purchased the land from the owner but he secured an undertaking that it was the owner's responsibility to evict the tenants and deliver vacant possession to him. The plaintiff therefore had notice of the defendants' interest in the land as occupiers and cultivators of the land. Thus the plaintiff purchased the land subject to the defendants' right to occupation and cultivation of the land.

As for the termination of the tenancy agreement, he said:

> There was insufficient evidence to suggest a yearly tenancy and a tenancy forever is unconscionable. I was not satisfied that three mouths' notice was sufficient and proper to evict the defendants from the land. I tend to disagree with the submission by the defendants' counsel that the tenancy could be terminated under section 24(1)(f) of the Act by the plaintiff applying to the committee for the eviction of the defendants on the ground that the plaintiff desired to cultivate the land himself provided that the plaintiff shall have given one year's notice in writing to the defendants that he required the land for cultivation by himself. This relief was not available to the plaintiff as there was no tenancy agreement which complied with the Act. I ruled, therefore, that the three months' notice of termination and delivery of vacant possession was of no effect.

The learned trial judge had placed much reliance on the judgment in *Ismail v. Haji Taib* [1972] 1 MLJ 259. We feel we need to distinguish the facts, however, as there the parties had entered into a tenancy agreement in the prescribed form duly executed and registered under the Act. Thereafter, there was no such agreement. Nevertheless, the tenant continued to cultivate part of the land and to pay rent after each harvest to the landlord or his representative. The tenant was subsequently evicted by the landlord who did the planting himself. The tenant complained to the Committee under the Act who ordered the landlord to execute a tenancy agreement with the tenant. It was held that despite there being no memorandum in writing or even if there is but it is not registered, this does not make it illegal as the relationship between the parties was perfectly legal being governed solely on the law of contract.

The learned trial judge here had accordingly dismissed the appellant's action with costs, declared the respondents as lawful tenants of the appellant, directed the appellant to deliver vacant possession to the respondents within three months and ordered the appellant to pay damages to be assessed and costs to the respondents.

We were of the opinion that the learned trial judge was a bit carried away by the decision in *Ismail bin Haji Taib (supra)*. Consequently, we need to go deeper into the facts of that case to get a proper perspective of things.

Earlier, in *Haji Taib v. Ismail* [1971] 2 MLJ 36, the High Court judge heard the appeal against the decision of the President of the Sessions Court. The respondent, a padi planter, was tenant of five relongs of padi land owned by the appellant. He had occupied the said land for 18 years until June 1966. Before 1958, the respondent was cultivating more than 10 relongs of the appellant's land, but sometime in that year, the appellant took back half of

the land. A tenancy agreement for the 1958/1959 season to the extent of the remaining half portion, that is five relongs, was executed and duly registered under the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance 1955 (hereinafter "the Ordinance") which was the forerunner of the Act.

The respondent thereafter continued to cultivate the land and paid rent accordingly to the appellant. Sometime in 1963, on a request in writing by the appellant, the respondent paid the rents to the appellant's nephew. Receipts of such payments were acknowledged by the nephew. The respondent was never in arrears of rent. In June 1966, the respondent alleged that the appellant, without any notice whatever, occupied the said land by sending a tractor to plough it, thereafter planted it with padi and harvested it, when in fact the respondent had already cultivated and prepared the land for planting. The respondent accordingly sought relief from the Padi Committee of Kota Setar under the Ordinance and on 30 July 1966, the said Committee made an order allowing the respondent to execute a tenancy agreement with the appellant. The appellant refused to do so. No further action was taken by the respondent under the Ordinance and he continued to cultivate the land and paid rents to the appellant.

The respondent brought an action against the appellant for trespass and damages on the grounds that he, the respondent, was deprived of cultivating the land and deriving benefit for the 1966/1967 season and had thereby suffered special and general damages. The learned president, while holding that it was illegal for the appellant landlord to collect rent without a tenancy agreement, held that the documents evidencing payments of rent established the relationship of landlord and tenant notwithstanding that the respondent had not complied with the mandatory provisions of the Ordinance.

It was held by the High Court, in allowing the appeal, that:

(a) no landlord is allowed to receive any rent from the tenant unless a memorandum of agreement is registered under the said Ordinance. In the present case, both the landlord and the tenant have contravened the provisions of the Ordinance in failing to enter into a written agreement;

(b) the parties are in *pari delicto.* Having contracted out of the Ordinance, they could not contract into it. A contract executed in contravention of a statute creating a duty or imposing an obligation is invalid and unenforceable. In the circumstances, the parties having contracted contrary to the ordinance, the plaintiff/respondent could not therefore seek relief from the court for any breach of the agreement;

(c) the Ordinance taken as a whole shows that it does not recognise any agreement entered into between a landlord and tenant outside its scope and ambit unless the landlord registers the agreement within a specified time or the tenant seeks redress to compel the landlord to execute a proper tenancy agreement if the former refuses to apply for registration;

(d) taking into consideration the purpose and object of the Ordinance and the various provisions dealing with security of tenure for tenant cultivators of padi lands, the Ordinance is a complete and comprehensive code by itself. As such it constitutes such "other provisions" within the first exception of section 3(1) of the Civil Law Ordinance 1956. It followed therefore that no common law relationship of landlord and tenant in the real sense of the word has arisen between the parties;

(e) the respondent was not a tenant at will but a bare licensee having a permissive occupation short of a tenancy. Therefore, the action of the appellant amounted only to forcible entry and he could not be sued for trespass to the land to which he had a better right to possession. However, the respondent was compensated for the expenses he had incurred in ploughing the land in expectation of cultivation, *in lieu* of the award for general damages.

The matter went to the Federal Court *vide Ismail bin Haji Taib (supra)* which held that:

(a) the order of the learned appellate judge would be set aside and the learned president's order restored except that it would be varied by ordering the defendant to pay $724 by way of special damages instead of $1,224 and nothing by way of general damages;

(b) the relationship between the parties was governed by the ordinary law of contract and was not affected by the Padi Committee's order which it is true is permissive in nature.

Per curiam, Suffian FJ (as he then was) said:

> It seems to us that the object of registration under the Padi Cultivators Ordinance is to protect tenants of padi land from the whims and fancies of their landlords, for under s. 3, a padi tenancy agreement (which can only be for one season) must be renewed by the landlord if the tenant requires it for the following season, and under s. 10, the tenant cannot be ejected without a written order from the padi committee. The Ordinance does not, in our judgment, render illegal a tenancy agreement not in writing or registered.

We would like to state that a closer look at the long title of the Act would indicate that it is an Act relating to the control of rent and security of tenure of padi cultivators and matters incidental thereto. It goes without saying that a padi cultivator seeking protection pertaining to matters relating to the control of rent and security of tenure must see to it that there is a tenancy agreement registered to that effect.

"Tenancy agreement" at s. 2 of the Act means any agreement whereby a landlord agrees to let and a tenant agrees to take any padi land for the purpose of cultivating padi and includes any agreement whereby any person agrees to work on any padi land for payment of a share of the crop or any consideration *in lieu* thereof. "Landlord" is defined as any person who lets land for the cultivation of padi and includes his agent, chargee, assign or successor in title. "Tenant" means the tenant of any padi land comprised in a tenancy agreement. Section 3 of the Act says that no person shall enter into a tenancy agreement unless such agreement is in writing and is in the prescribed Form A of the First Schedule.

It is obvious that, unlike the facts in *Ismail bin Haji Taib (supra),* there was no tenancy agreement in writing and registered between the previous owner and the respondents and consequently between the parties to this appeal and it cannot be said, even if we accept the fact that there was some arrangement between the respondents and the previous owner, that there ever existed a tenancy agreement in line with the Act as it was only then an oral arrangement. But the decision in that case relied not only on the Ordinance but the Kedah Land Enactment (hereinafter "the Enactment") as well wherein it was recognised that the tenancy agreement need not be in writing and registered.

The Enactment was repealed on 1 January 1966 with the coming into force of the National land Code (hereinafter "the Code") which by sub-s. (2) of s. 3 specifically stated that nothing in the Code shall affect the provisions of the Ordinance and which by sub-s. (3) of s. 223 provided that nothing in that section shall authorise a landlord, as defined in the Ordinance, to let land for the cultivation of padi otherwise that in pursuance of the Ordinance.

The effect of these is that, with the coming into force of the Code, matters relating to the control of rent and security of tenure of padi cultivators were governed solely by the Ordinance, now the Act, and the relevant tenancy agreement had to be in writing and registered under the Act from the 1 January 1966. It is interesting to observe that the decision in *Ismail bin Haji Taib (supra)* may not be quite correct because the so-called breach occurred only in June 1966 after the Code came into force and although the parties had entered into the tenancy arrangement well before the introduction of the Code, the rights of the parties prior to the coming into force of the Code were extinguished on the 1 January 1966 or, at the latest, when the yearly tenancy came to an end in 1966.

It follows that the learned High Court judge here was clearly in error, despite the issuance of rental receipts by the previous owner, when he held that there was a valid tenancy agreement existing before the appellant became the owner because there was no tenancy agreement in writing and registered under the Act since the Code came into force.

Learned counsel for the respondents had cited a number of authorities pertaining to land matters which impressed us as not being relevant to the issues before us. In fact, they were irrelevant to the point of being misleading. In the event, we disagreed with the finding of the learned High Court judge, allowed the appeal with costs here and below, and refunded the deposit to the appellant.

Ahmad Fairuz JCA:

I have had the advantage of reading the draft judgment of my learned brother, NH Chan JCA, and the judgment of my learned brother, Abdul Malek Ahmad JCA (now FCJ), and I concur with the conclusions stated therein. I associate myself with the approach and reasonings taken by my learned brother, Abdul Malek Ahmad, in his judgment. However, as regards my learned brother, Abdul Malek Ahmad's observation at para 26 of his judgment, I would only opine that the Federal Court might have decided differently if it had been aware of the fact of the repeal of the Kedah Land Enactment.